IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 305 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUPENDRASINH RATANSINH GOHIL

Versus

STATE OF GUJARAT

Appearance:

HL PATEL ADVOCATES for Petitioner No. 1-4

MR ASHISH M DAGLI for Petitioner No. 1-4

MR IM PANDYA, APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/06/2003

ORAL JUDGEMENT

1. This Appeal is preferred against the judgment and order pronounced by Special Judge (Atrocity Act), Bharuch, on 29.3.2001 in Special Atrocity Case No.

125/97, convicting the present appellants under Sections 323, 325, 326 read with Section 34 of IPC and sentencing each of the accused for five months rigorous imprisonment for the charge under Section 323 and fine of Rs. 400/and in default, simple imprisonment for two months; rigorous imprisonment of 3 years for the charge under section 325 of IPC and fine of Rs. 1,500/- and in default simple imprisonment for six months, and rigorous imprisonment for 5 years the charge under Section 326 and fine of Rs.2,500/- and in default, simple imprisonment for one years. It was directed that all the sentences shall run concurrently.

2. Facts indicate that Vallabhbhai Prabhatbhai Tadvi, resident of village Tankari, Tal. Rajpipla, lodged an FIR before the Rajpipla Police Station on 19.7.1997 at 11.30 hours against the present appellants for the charges punishable under Sections 323, 325, 326 and read with Section 114 of the IPC and under Section 135 of the Bombay Police Act and also for the offence under Section 3(1)(10) of the Scheduled Castes & the Scheduled Tribes Prevention of Atrocities Act, 1989. Accordingly, it was revealed in the complaint that on 19.7.1997, PW-1 Vallabhbhai Prabhatbhai Tadvi, Complainant, was on leave from his duty and was waiting at the bus stand of the village for going out, where injured witness PW-4 Kanaksinh Chandrasinh Gohil and injured witness PW-3 Laxmanbhai Jesangbhai Tadvi, came to the bus stand for boarding a bus to Rajpipla. All of them were waiting for the bus. At about 9.30 to 10.00 hours, these four appellants came to the bus stand with iron pipes and sticks. Appellant No.1 and appellant No.2 gave blows to PW-2 Jagdisbhai Laxmanbhai Tadvi by pipe on his head and jaw; PW-3 Laxmanbhai Jesangbhai Tadvi, PW-4 Kanaksinh Chandrasinh, attempted to intervene and at that time, appellant No.2 inflicted pipe blows on PW-4 Kanaksinh Chandrasinh on his left hand and on the legs. Accused No.4 inflicted pipe blows to PW-3 Laxmanbhai Jesangbhai Tadvi on his left hand. Thereafter, all the appellants escaped from the scene of offence. Complainant Vallabhbhai Prabhatbhai Tadvi brought all the injured witnesses to Government Hospital at Rajpipla in bus and filed the above said complaint. It was also disclosed that the cause of this incident was a quarrel taken place between the parties on earlier day of this incident. It was disclosed that a piece of land, alleged to have been owned by PW-4 Kanaksinh Chandrasinh was cultivated by PW-3 Laxmanbhai Jesangbhai Tadvi. For the ownership of that piece of land, there is a dispute between PW-4 Kanaksinh Chandrasinh and Ratansinh Bhupendrasinh. Ratansinh Bhupendrasinh also claimed

ownership over the land and, therefore, on earlier day, a quarrel took place between Kanaksinh Chandrasinh and Ratansinh Bhupendrasinh, in which Ratansinh Bhupendrasinh and others were injured, for which a criminal complaint also came to be lodged.

3. After filing of the above said FIR by complainant Vallabhbhai Prabhatbhai Tadvi, PW-1, investigation was carried out by PW-11 PSI Ashokbhai Sonvarne of Rajpipla Police Station. A charge sheet came to be filed against the appellants in the Court of Judicial Magistrate, First Class, at Rajpipla for the offences punishable under Sections 326, 323, 325 and 114 of the IPC read with Sec.135 of the Bombay Police Act and under Section 3(1)(10)of the Scheduled Castes & Scheduled Tribes Prevention of Atrocities Act, 1989. The case, under Section 329 of the Criminal Procedure Code, was committed to the Court of Sessions, Bharuch, and was registered as Special Atrocity Case No. 125/97. Charge was framed vide Exh.3 for the above said charges against the appellants. Prosecution examined in all 14 witnesses. Complainant Vallabhbhai Prabhatbhai Tadvi was examined at Exh. 13 as PW-1. Three injured witnesses, PW-2 Jagadishbhai Laxmanbhai, PW-3 Laxmanbhai Jesangbhai Tadvi and PW-4 Kanaksinh Chandrasinh Gohil, were examined at Exhibits 15, 16 and 17. In addition to the injured witnesses, the prosecution also examined three eye witnesses as PW-5 Sharadaben Manilal, PW-9 Madhubhai Kanjibhai Tadvi and Ranjitbhai Prabhatbhai Tadvi, PW-12, at Exh. 18, Exh. 25 and Exh. 34 accordingly. PW-10 Dr. Kamleshbhai Rathod, who examined first point of time the injured at Rajpipla Government Hospital, is examined at Exh. 27. The injured were thereafter referred to SSG Hospital at Baroda where they were examined by Dr. Sunilkumar Mavjibhai, PW-14, who is examined at Exh. 40. The injured thereafter took treatment at SSG Hospital. Ambalal Gambhirbhai is examined as PW-6 at Exh.19 as panch witness of panchnama of scene of offence, which is at Exh. 20. According to the prosecution case, the weapons like pipes and sticks were recovered from the present appellants vide panchnamas at Exh. 22 and Exh.23. Both the Panch witnesses have been examined as PW-7 Shivsinh Natvarbhai at Exh. 21 and PW-8 Gajendrabhai Jaswansinh at Exh.24. Both these panch witnesses are common in discovery panchnama at Exh. 22 and Exh.23. PW-2 Jagdishbhai Laxmanbhai Tadvi belongs to Adivasi Scheduled Tribe, and to prove this fact, concerned witness from Mamlatdar Office, was examined by prosecution as PW-13 Narendrasinh Chandrasinh Gohil at Exh. 36. Investigating Officer, the then PSI Ashokbhai Sonvarne, was examined at Exh.31 as PW-11. Prosecution

also produced original complaint at Exh.14, certificates of injured of Rajpipla Hospital at Exh. 29, Exh. 30, Exh. 28, the medical certificate of injured of SSG Hospital, Baroda are also produced at Exhibits 41, 42 and 43. Certificate denoting that Jagadishbhai Laxmanbhai Tadvi, PW-2, belong to Scheduled Tribe is produced by the prosecution at Exh. 37.

4. After considering the evidence on record and after hearing the parties at length, the learned Trial Judge came to the conclusion that the appellants were guilty for the offence punishable under Sections 323, 325, 326 read with Section 34 of the IPC. The appellants were acquitted for the charges levelled against them for the offence punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes Prevention of Atrocities Act, 1989 as well as for the charges levelled against them under Section 135 of the Bombay Police Act.

5. Being aggrieved by the said judgment of conviction dated 23rd of March, 2001, delivered by the Special Judge i.e. Addl. Sessions Judge, Bharuch, Camp at Rajpipla, this Appeal is preferred by original accused.

6. The record reveals that initially when the Appeal came to be heard for admission, learned Advocate for the appellants was not present and, therefore, this Court vide order dated 6.8.2001 dismissed the said appeal. However, the present appellants filed Spl. Leave to Appeal (Criminal) No. 7026/2001, before the Apex Court wherein vide order dated 18th of March, 2002, the Apex Court disposed of Criminal Appeal No. 403/02 arising out of said SLP No. 7206/2001 setting aside the order of this Court passed on 6.8.2001 dismissing the Criminal Appeal No. 305/2001 and remanded the matter to this Court for being dealt with in accordance with law upon affording an opportunity to the parties. Thereafter, this Appeal came to be admitted by this Court vide order of this Court dated 4.5.2002 and placed on the Board for final hearing.

7. Learned Advocate Mr.A.M.Dagli for the appellants and learned APP Mr. I.M.Pandya for the State were heard at length. Learned Advocate for the appellants vehemently urged that there are contradictions in the evidence of prosecution throwing reasonable doubt on the veracity of the prosecution case. He urged that the evidence is not clear on the point that who inflicted blows and by what weapons. The version narrated in the First Information Report is not fully corroborated by the Complainant Vallabhbhai - PW1. There are contradictions

as to use of weapons. None of the witnesses refers to sticks used by the present appellants in the incident while history given by the witnesses before the Doctor, PW-10, who examined the injured at the first instance was in respect of sticks. It was also urged that in spite of this, when injured were referred to SSG Hospital at Baroda and examined by PW-14 Dr. Sunilkumar Mavjibhai again history of assault by pipes was given by the

injured. According to learned Advocate for the appellants, this is the material contradictions casting doubts on prosecution case. Learned Advocate further canvassed the theory of defence which was projected during trial. It was urged that there was dispute about the ownership and possession of land between PW-4 Kanaksinh Chandrasinh and one Ratansinh Bupendrasinh. A quarrel had taken place on earlier day between the families of Kanaksinh and Ratansinh, in which person from both the sides were injured. It was argued that taking shelter of the injuries caused in the previous day incident, this concocted incident was reported to the police. It was urged that it was an admitted fact that quarrel had taken place on earlier day. It was further urged that all three injured witnesses are related and interested witnesses. It was also urged that other three eye witnesses i.e. PW-5 Sharadaben Manilal, happens to be wife of brother of PW-4, eye witness PW-12 Ranjitbhai Prabhatbhai Tadvi is also relative of PW-4 Kanaksinh and third eye witness Madhubhai Kanjibhai Tadvi is also an interested witness. It was contended that therefore in the circumstances when it is disclosed in the evidence that there were independent witnesses, the Investigating Agency was bound to examine them and cite as witnesses to corroborate the say of injured as well as other three eye witnesses. It was urged that the say of the injured has no support at all from independent corroboration. In these circumstances, it was also further urged that there was no evidence at all to connect the appellants with the serious injuries and more particularly grievous injuries as envisaged by Section 320 of the IPC, so the liability of the appellants of conviction under Sections 325 and 326 would not arise at all. It was urged that to prove the fracture alleged to have been caused to PW-4 Kanaksinh no evidence has been led by the prosecution nor any report like X-ray was placed for consideration of the court. It was argued that, according to the prosecution case, injured were taken first to Rajpipla Government Hospital, where they were first examined by PW-10 Dr. Kamleshbhai Sonvarne, who has opined that with regard to PW-4 Kanaksinh that there may be suspected fracture of radius and ulna and, therefore, the injured were referred

to SSG Hospital where they were attended by PW-14 Dr. Sunilkumar who also primarily examined the injured and suspected fracture of radius and ulna. Therefore, PW-4 is concerned, according to PW-14, PW-4 was sent to Orthopaedic ward, while others were sent to Surgical ward. According to learned Advocate nothing is proved what happened in Orthopaedic ward or Surgical ward in respect of the injured witnesses. According to learned Advocate for the appellants therefore there is no evidence at all with respect to any grievous hurt as envisaged by Sec.320 of the IPC alleged to have been caused by appellants to the injured. It was urged that the learned Trial Judge fails to appreciate this aspect of the prosecution evidence and convicted the accused even for the charges under Section 325 and 326 of the IPC. He further urged the other injuries to all three injured are concerned, they are simple injuries. It was ultimately urged that the Appeal be allowed and appellants be acquitted for the offence under Sections 323, 325, 326 read with Section 34 of the IPC.

8. Learned APP Mr. I.M.Pandya has vehemently supported the decision in question. It was urged that there is nothing wrong with the mode of appreciation by the Trial Judge so far as the occurrence of the incidence is concerned. It was urged that two medical experts PW-10 Kamleshbhai Rathod of Rajpipla Government Hospital and PW-14 Dr. Sunilkumar Mavjibhai of SSG Hospital opined about the fracture injury of PW-4 Kanaksinh and according to him this was sufficient evidence to connect the appellants with the crime in question.

9. I have carefully gone through the evidence on record of the Trial Court more particularly with reference to the contentions raised by both the learned advocates for the parties.

10. The incident in question had occurred on 19.7.1997 at about 9.30 to 10.00 a.m. A complaint has been filed by one Vallabhbhai Prabhatbhai Tadvi, who is examined as PW-1 at Exh. 30. In his complaint he has narrated the incident in a manner that in connection with the previous incident, PW-3, PW-2 and PW-4 were called by the Police and, therefore, they were waiting at the bus stand for boarding the bus to go to Rajpipla. The bus stand is situated at the outskirts of village Tankari. At that time, the present appellants came with iron pipes. Out of which, appellants No. 1 and 2 and one more appellant started beating PW-2 Jagadishbhai Laxmanbhai Tadvi by pipes who received injuries on head and jaw. PW-3 and PW-4 attempted to intervene in this

quarrel and appellant No.2 and one more appellant inflicted pipe blows on both the hands of PW-4 Kanaksinh. PW-3 Laxmanbhai Jesangbhai Tadvi also received injuries of pipe blows by the hands of all these appellants. According to the version of the First Information Report, thereafter the injured were taken by him to Rajpipla in ST bus and were taken to Government Hospital, Rajpipla, where they were treated and thereafter he went to Rajpipla Police Station for recording of First Information Report. PW-1 Vallabhbhai Prabhatbhai Tadvi was examined before the court vide EXh. 13. though he admitted to have given the above said complaint which is at Exh.14, but in examination-in-chief itself he further deposed that because he was to reach his work place at Gichad village, Tal. Dediyapada through bus, he came to the bus stand and found PW-2 Jagadishbhai Laxmanbhai Tadvi lying near the bus stand. He was injured and at the instance of PW-2 Jagadishbhai he offered his complaint at Rajpipla Police Station. On appreciating this evidence, it clearly transpires that PW-1 complainant Vallabhbhai Prabhatbhai Tadvi was not an eye witness to the incidence. At the same time, only because the complainant has not posed himself as an eye witness, the case of the prosecution would not be broken.

11. Thereafter, the prosecution has examined three important injured witnesses, namely, PW-2 Jagadishbhai Laxmanbhai Tadvi, PW-3 Laxmanbhai Jesangbhai Tadvi and PW-4 Kanaksinh Chandrasinh Gohil. All of them have deposed the manner in which the incident had occurred. It is stated by PW-2 Jagadishbhai Laxmanbhai Tadvi that while they were waiting to board a bus, all the four appellant accused came there with pipes and sticks. Accused No.2 inflicted pipe blows to PW-4 Kanaksinh on both the hands and on thigh. The remaining appellants No. 3 and 4, brother of appellant No.1 also inflicted blows to Kanaksinh. On his intervening, appellant No.2 inflicted a blow to him on head and on Jaw. Accused No.4 also inflicted stick blows. He has further stated that appellant No.1 inflicted a pipe blow on the left hand of his father Laxmanbhai Jesangbhai Tadvi. It is deposed by him that the incident was the result of controversy and dispute between Kanaksinh and Ratansinh Bhupendrasinh about a piece of land, which according to the prosecution case, had been cultivating by PW-3 Laxmanbhai Jesangbhai Tadvi at the instance of PW-4 Kanaksinh Chandrasinh Gohil. No contradictions in the evidence of PW-2 could be brought about in examination in cross. It was suggested that there was a scuffle between the parties on previous day in connection with the ownership and possession of a piece of land. Witness further admitted

that there were other passengers of the bus and other persons were also present at the time of incident. The second injured witness is examined at Exh. 16 by prosecution as PW-3 Laxmansinh Jesangbhai. He also corroborates the case of the prosecution and deposed that while they have been waiting at the bus stand, at the time of incident, appellants came there and started beating PW-4 Kanaksinh with pipes. According to this witness, Kanaksinh received injuries on the leg while PW-2, his son Jagadishbhai intervened, appellant No.2 inflicted pipe blows on the head of Jagadishbhai and on Jaws as well. Appellants No. 3 and 4 inflicted stick blows to Jagadishbhai. He has also deposed that the appellant No.2 inflicted pipe blows on his left hand. This witness has been cross-examined at length but nothing is brought about to discredit the witness. Though the witness has admitted that there was scuffle between the parties on previous day, no contradictions in his evidence in respect of the statement made before the police and in the evidence before the Court has come out. The prosecution examined a third important injured witness at Exh. 17 PW-4 Kanaksinh Chandrasinh. He stated that his agricultural land is situated at village Tankari. As according to him, he has given this land for cultivation to PW-2 Jagadishbhai Laxmanbhai Tadvi and when they visited this land on the previous day of the incident, there was a scuffle with Ratansinh and others. He stated that on the day of the incident, he himself, his brother's wife Sharadaben Manilal, PW-5, Jagadishbhai Laxmanbhai Tadvi, PW-2, Laxmanbhai Jesangbhai, PW-3, were waiting at the bus stand of village Tankari for boarding a bus to Rajpipla. The appellants came there and started beating. Appellant No.2 inflicted injuries by pipe and appellant No.4 inflicted stick blows. Due to injuries, he became unconscious. The appellant also inflicted pipe blows on PW-2 Jagadishbhai Laxmanbhai Tadvi. In examination in cross, he was confronted with the fact about the disputed land. It was alleged that the witness is ordinarily a resident of Vadodara, and on the date of the incidence, his presence at the bus stand of village Tankari was doubtful. He was also confronted about the scuffle taken place on the previous day. However, no contradictions was brought on record through cross-examination in respect of his statement before the police.

12. To corroborate the injured witnesses, prosecution has also examined three eye witnesses and they are PW-5 Sharadaben Manilal, wife of the brother of PW-4, PW-9 Madhubhai Kanjibhai Tadvi and PW-12 Ranjitbhai Prabhatbhai Tadvi. PW-5 Sharadaben Manilal, who has been

examined vide Exh.18. She has stated that the appellants came to the bus stand and inflicted pipe blows to Kanaksinh - PW4 on both the hands. It was also deposed by her that appellant No.2 inflicted pipe blows on the head as well as on the jaw of Jagadishbai Laxmanbhai Tadvi, PW-2. It was also deposed by her that the appellant No.4 Bharatsinh Bhagvansinh Mangrola inflicted stick blows on the left hand of PW-3 Laxmanbhai Jesangbhai. She was also confronted with the fact about the dispute in respect of land in question and about the incident which took place on earlier day, However, in the cross-examination, nothing has come out to discredit this witness. PW-9 Madhubhai Kanjibhai Tadvi, Exh. 25 has been examined by the prosecution as an eye witness. According to him his house is situated near the bus stand and while he was sitting in wada (open space) witnessed the incident. He has also supported fully the case of the prosecution though in examination-in-cross, an attempt has been made to show that within the location of his house and the bus stand, it was impossible for him to witness the incident, but this question has been negatived by the witness. The third eye witness PW-12 Ranjitbhai Prabhatbhai Tadvi, who has been examined at Exh. 34. This witness has a small shop (galla) at ST bus stand at village Tankari. He was at his shop when the incident occurred. He witnessed the incident and narrated the same in the court. He supported the prosecution fully and deposed that the appellant No.1 was having pipe in his hand and rest of the appellants had sticks and all the appellants inflicted blows to all the three injured witnesses. He was examined by the defence but except suggestions, nothing transpires to disbelieve this witness.

13. The prosecution has examined three injured witnesses and three eye witnesses. In addition to this, the prosecution has also examined two Medical Experts. First point in time, the injured were shifted to Rajpipla Government Hospital, where they were treated by Dr.Kamaleshbhai Rathod, PW-10. He has deposed that on the day of the incident at about 10.30 hours, all the three injured were brought without any police yadi and PW-4 Kanaksinh offered the history of assault by stick while other two injured offered history of assault by pipe. According to Doctor, the injury which injured sustained might have been caused within previous six hours. He suspected fracture of radius and ulna on right hand of Kanaksinh Chandrasinh because he saw it clinically, and he produced on record the certificates of injuries at Exhs.28 29 and 30 and accordingly Kanaksinh Chandrasinh had the following three injuries:

(1) Disfigure tender small is deformative and punctured wound of 1 x 1 cm born deep on Rt. facture, clinically seen of the ulna & radius.

(2) Disfigure tender swelling on right leg.

(3) Disfigure tender swelling on left hip. facture.

He has fracture and treated as indoor patient.

To my opinion, above injuries are due to hard and blunt objects. Patient is transferred to SSG Hospital, Baroda for further treatment on 19.7.97.

Laxmanbhai Jesingbhai Tadvi, PW-3, had following injuries :

(1) Disfigure Tender swelling with deformative on left forearm.

(2) Contusion mark of 1" x 1'2" redder on Rt. leg.

(3) Contusion mark 2" x 1" redder on Lt. Leg.

To my opinion above injuries due to hard and blunt objects. He was transferred to SSG Hospital, Baroda for further treatment.

Jagadishbhai Laxmanbhai Tadvi, PW-15 had two injuries as noted below:

(1) C.C.W. of 4" x 1/2" Muscle deep, fresh on Rt. parieto - Occipital vesion.

(2) Disfigure Tender swelling on Lt. mandibular vesion.

To my opinion, above injuries are due to hard & blunt objects. Patient was transferred to SSG Hospital, Baroda, for further treatment.

14. He referred all the three injured to the SSG Hospital at Baroda. The prosecution further reveals that the injured reached the SSG Hospital, Baroda at about 2.30 hours where they were examined by Dr.Sunilkumar Mavjibhai who has been examined by prosecution at Exh. 40.

15. All the three injured offered the history of assault by pipes. According to PW-14, Kanaksinh had one punctured wound and suspected facture on the right forearm. He produced the certificate of injury in respect of PW-4 Kanaksinh and according to him he had following injuries.

Brief History: H/o alleged assault by pipe at 9.00 a.m. Today patient is conscious.

Identification marks: 1.
2.

Injuries (i) Punctured wound E.PISIT over (R) forearm.

(ii) PISIT E CLW on (L) fore arm.

(iii) PISIT Over (R) Leg/

Ref. O/c aid.
Sd/- Illeg.

Remarks: Simple/grievous/kept pending for lack of X-ray report.

According to PW-14, Laxmansinh Jesangbhai Tadvi had the following injuries as per certificate produced by him at Exh.42.

Injuries: (i) PISIT over (L) rest is ?

(ii) Punctured wound on (L) elbow.

(iii) PISIT over (R) Leg & (L) thigh

Reff to I/c aid.
Sd/-Illeg.

Remarks: Simple/grievous/kept pending for lack of X-Ray Report.

At Exh. 43, injury certificate of Jagdishbhai Laxmanbhai Tadvi has also been produced and accordingly to PW-14, he had the following injuries :

Injuries : (i) Stitched wound over (R) parietal region.

(ii) Punctured wound PISIT

over (R) angle of mandibular region or 1 x 0.5 c.m.

Ref. to S/c aid.
Sd/- Illeg.

Remarks: Simple/grievous/kept pending for lack of X-ray report.

16. PW-14 has found suspected fracture of radius & ulna and, therefore, Kanaksinh was referred to Orthopaedic ward of the SSG Hospital. According to him, he was an indoor patient till 10.8.1987 from the date of the incident. He had brought the papers for the treatment but the prosecution fails to produce the same on record. This medical evidence supports the prosecution version about the incident and the injury caused to the injured witness.

17. In addition to this, the prosecution has also examined PW-6 Ambalal Gambhirbhai at Exh. 19 to prove the panchnama of scene of offence, which is at Exh.20. The prosecution has also examined PW-7 Shivsinh Natvarbhai at Exh.21 and PW-8 Gajendrasinh Jaswantsinh at Exh. 24 to prove the discovery panchnama at Exhs. 23 and 24. One of the witnesses i.e. PW-6, PW-7 or PW-8 supported the prosecution case. Consequently, panchnama of scene of offence at Exh. 20, Exh. 22 and Exh. 23 discovery panchnama could not be proved.

18. PW-13 Narendrasinh Chandrasinh Gohil has been examined at Exh. 36, produced a certificate in respect of Jagadishbhai Laxmanbhai Tadvi at Exh. 37 to prove that PW-2 Jagadishbhai Laxmanbhai Tadvi belonged to Scheduled Tribes, but the Trial Judge has since acquitted the appellants on the charge under the Scheduled Castes and the Scheduled Tribes Prevention of Atrocities Act, 1989, the evidence requires no appreciation at this stage. At Exh.31, Investigating Officer - Ashokbhai Sonvarne (PS) has been examined.

19. On careful consideration and on minute scrutiny of the evidence, it clearly transpires that the prosecution is able to prove the case so far as the occurrence of the incident is concerned and the injuries received by the three witnesses. It has been vehemently argued that there are contradictions as to who inflicted the injuries to which witnesses. Further it was vehemently argued that there are contradictions about the weapon used by the appellants. It was therefore urged that accused are entitled to benefit of doubts. Having

considered the evidence as a whole the appreciation of the evidence discloses rings of truth in the version of the witnesses. If the medical evidence is appreciated along with the evidence of eye witnesses, it transpires that the injuries which the injured received could be caused either by sticks or by pipes. They are not self-inflicted injuries. This medical opinion has not been challenged by the defence. So far the alleged contradiction about the weapon used by the accused is concerned more particularly about sticks or pipes, the such contradictions are very insignificant and may not lead to any doubt about the occurrence of incident and the injuries inflicted. Evidence discloses that injuries could be caused by sticks or pipes and therefore it was immaterial whether blows were inflicted with pipes or by sticks. The resultant effect of stick blows or pipe blows is similar as per the medical evidence. The witnesses deposing the incident after sometimes in the court may forget who was holding pipes and who was holding sticks unless there is purposeful design on changing the statements or deliberations on the part of the witnesses to lead the court to some wrong conclusion. Some contradictions can never be resulted creating any doubt in prosecution case. Some discrepancies in the evidence and particularly in the evidence of more than one witnesses is bound to be there due to tendency of human nature. Thus, some embellishment here and there is not ruled out even in cases of otherwise truthful and reliable witnesses. It is known law of the land that the maxim "Falsus in uno falsus in omnibus has no application so far as the criminal law is concerned. It is always the duty of a court to shift the grains from the chaff. In this matter, on scrutinising the evidence of eye witness and injured witnesses more carefully and closely, it is difficult to come to the conclusion that two sets of all the three witnesses are not reliable and not creditworthy. Each witness corroborates the other. The further corroboration is found from the surrounding circumstances i.e. after the injury to the injured witnesses the same were noticed by the Medical Expert, to be more exact, the incident occurred at about 9.30 to 10.00 a.m. The Medical Expert PW-10 Dr. Kamleshbhai Rathod at Rajpipla Government Hospital examined the eye witnesses at 10.30 and noticed the above said injuries. The injuries were further confirmed by PW-14 Dr. Sunilkumar Mavjibhai, at SSG Hospital, Baroda. All the more, while appreciating the evidence of prosecution, very important and relevant consideration which surfaces is what were the chances for the witnesses for false implication of the appellants and what was the motive behind that. The enmity between the parties which is

magnified by the defence is double edged sword, that the same would provide the motive for the appellants, as narrated by the prosecution witnesses. Therefore, injuries as were inflicted are proved and on appreciating the evidence, chances of falsely implicating the appellants were totally eliminated. I clearly find rings of truth in the evidence of prosecution which inspires confidence to base conviction. The manner in which three injured witnesses as well as eye witnesses have deposed before the court without any contradictions to their statements or improvement indicate their simplicity to depose a truth, reflecting naturalness and truthfulness of the maker of the statement. Hence, the defence contention about the false implication basing on the above said contradiction required to be discarded. In the result, I do not find any fault with the mode of appreciation by the Trial Judge. So far as the proof of incident and injuries are concerned, the cardinal rule which has taken place of law, is some discrepancies bound to be there in each case, which must not weigh with the court so long it does not materially affect the prosecution case. Contradictions as to who inflicted blows by which weapon in the circumstances of this case, as reasoned above, must not materially affect the core of the prosecution case. The discrepancies pointed out are merely pebbles, the court should tread upon it and not boulders coming in the way of court in appreciating the evidence so as to cast doubt in the prosecution case. The prosecution, therefore, is able to prove the case against the appellants beyond reasonable doubt so far as occurrence of the incident is concerned and the injuries caused to PW-2, 3 and 4. The conclusion of the Trial Judge in this respect requires no interference.

20. This brings me to the important next limb of the matter as to for which offence the appellants are liable to be punished. The Trial Court convicted the appellants, as said above, under sections 323, 325 and 326 read with Sec. 34 of the I.P.C. To convict the accused under Sections 325 and 326, the prosecution must prove that the case falls within the ambit of grievous hurt as defined by Section 320 of the IPC. The injuries caused to all the three injured witnesses are referred to above as described by the Medical Experts, except one injury of PW-4 Kanaksinh on right hand, none of the injuries to none of the injured witnesses falls within the ambit of grievous hurt as defined by Section 320 of the IPC. Then, the question is the injuries inflicted to PW-4 Kanaksinh on right arm whether resulted into any fracture. In other words, it is the duty of the prosecution to prove that such injuries resulted in

fracture so as to bring the case within the scope of Section 320 of the IPC. While the evidence of Medical Experts was appreciated, the PW-10 and PW-14 appear to have offered their tentative clinical opinion as to fracture on right radius and ulna to PW-4 Kanaksinh. This is amply clear from the certificate issued by the Medical Expert which is at Exh.28, wherein PW-12 says that the fracture is clinically seen in respect of injured witness PW-4 Kanaksinh Chandrasinh. While PW-14 Exh.40 Dr. Sunilkumar, SSG Hospital also vide his certificate at Exh.41 clinically found that there might be fracture on right ulna and radius and in last line of his certificate at Exh.41, in remarks it has been specifically mentioned by him that "kept pending for lack of X-ray Report". In his examination before the Court both the Medical Experts opined that it appeared to them to be a fracture of radius and ulna. Exhibit 41 certificate makes it clear that this could be confirmed by the x'ray report or by the treatment papers of Orthopaedic ward, to which PW-4 Kanaksinh was forwarded. Dr.Sunilkumar PW-14 had treatment papers with him, but the prosecution failed to get the same produced on record to prove the confirmed opinion about causing of fracture of radius and ulna to PW-4 Kanaksinh. Appreciating these circumstances, the only conclusion which I can draw from the evidence of both the Medical Officers that though they suspected fracture but they could not positively ascertain about it without X'ray or report from Orthopedic Ward. Thus prosecution has failed to prove by confirmed medical opinion that PW-4 Kanaksinh had facture of Ulna and radius which ought to have been proved either by producing X-ray or leading evidence in this respect through the Orthopaedic ward. No such attempt has been made by the prosecution. PW-14 Dr. Sunilkumar Mavjibhai after having preliminary examination, referred the injured witnesses to Orthopaedic ward and Surgical ward. According to his evidence, thereafter none of the patients was treated by him. This evidence leads to the fact that though the Medical Experts, particularly, PW-14 suspected fracture of right ulna and radius in respect of PW-4 Kanaksinh, but he did not offer confirmed opinion and kept it pending for X-ray report or any other report from Orthopaedic ward. Thus, in absence of proof beyond reasonable doubt as to injuries received by the injured witnesses were grievous injuries, the appellants could not have been convicted for the offences punishable under Sections 325 and 326 of the Indian Penal Code. The learned Trial Judge erred in appreciating the evidence in this respect.

21. After appreciating the evidence, as a whole, as

said above, occurrence of incident is proved, injuries to injured witnesses are proved, but at the same time, the prosecution has failed to prove that the injuries sustained by the prosecution witnesses were of such nature as can be labelled as grievous, for which the appellants could be convicted under Section 325 and 326 of the IPC. At the most, therefore, the appellants after appreciating the evidence, are liable to be convicted only for the offence under Sections 323 of the IPC for causing simple hurt. In other words, what is proved by the prosecution is an offence against appellants under Section 323 of the IPC for the simple hurt and prosecution failed to prove the case against the appellants for the grievous hurt so as to invite conviction under Sections 325 and 326 and to that extent, the judgment and order under challenge is required to be modified.

22. It was brought to my notice that all the four appellants were under custody from the date of incident i.e. from 19.7.1997 till they were released on bail. On seeing the record, it is found that all the appellants were under custody for some days during trial. They were convicted on 29th of March, 2001. At the time of conviction i.e. 29th of March, 2001 all the four appellants were taken into custody and were released on bail only by the order of this Court passed on 4.5.2002. Thus, all the accused addition to some days they were remained under custody undertrial, also remained in custody after conviction for 13 months and 3 days, from 29.03.01 to 4.5.2002 and only released on bail pending this Appeal by the order of this Court which is dated 4th of May, 2002. The maximum punishment which is prescribed by the Penal Code for the offence under Section 323 is one year or fine or both. The extent of fine is Rs.1,000/-. While the appellants have undergone more punishment than prescribed by Section 323, the ends of justice will be met if the appellants are punished with the imprisonment which they have already undergone pending this Appeal for the offence punishable under Section 323 of the IPC which is proved against each of the appellants. Since each of the appellants have undergone the punishment more than prescribed, I do not deem it proper to impose any fine upon any of the appellants.

23. In this view of the matter, this Appeal is allowed to the extent that the conviction of the appellants under Sections 325 and 326 of the IPC and the punishment consequently is set aside, though the conviction of the appellants under Section 323 of the IPC

is upheld, but the punishment awarded by the Trial Judge is set aside, instead, the punishment for the period for which each of the appellants has under gone is awarded, and to that extent the judgment and order of conviction dated 29.3.2001 passed by Special Judge (Bharuch) in Special Atrocity Case No.125 of 1997 is modified. So far as the orders regarding muddamal is concerned, the same is left unaltered. Personal bonds and surety bonds given by each of the appellants and sureties are hereby stand cancelled, and if any fine is paid by any of the appellants in the Trial Court be refunded to such appellant.

(J.R. VORA, J.)

p.n.nair